

REMARKS

Claims 1-10 are pending in this Application. By this Amendment, claims 1, 2, 4, and 7-10 have been amended to more particularly point out and distinctly claim the crystalline polymer, support for which can be found at page 3, lines 30-31. Entry and consideration of these amendments are earnestly requested inasmuch as they do not introduce new matter.

Claim Rejections

Double Patenting

A. Response to provisional rejection of claims 1-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 10/493,801(US 2007/0265398) of de Palo et al.

In response to the provisional rejection of claims 1-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 10/493,801(US 2007/0265398) of de Palo et al. (“De Palo”), Applicants have included with this Response a Terminal Disclaimer. Reconsideration and withdrawal of the Rejection respectfully is requested.

B. Response to provisional rejection of claims 1-3, and 7-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 11/793,843 (US 2008/0167428) of Massari et al.

In response to the provisional rejection of claims 1-3, and 7-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 11/793,843 (US 2008/0167428) of Massari et al. (“Massari-1”), Applicants have included with this Response a Terminal Disclaimer. Reconsideration and withdrawal of the Rejection respectfully is requested.

C. Response to provisional rejection of claims 1-3, and 7-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-9 of copending Application No. 11/664,575 (US 2008/00701032) of Massari et al.

In response to the provisional rejection of claims 1-3, and 7-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-9 of copending Application No. 11/664,575 (US 2008/00701032) of Massari et al. (“Massari-2”), Applicants have included with this Response a Terminal Disclaimer. Reconsideration and withdrawal of the Rejection respectfully is requested.

Rejections Under 35 U.S.C. § 103

D. Response to rejection of claims 1-10 under 35 U.S.C. 103(a) as unpatentable over EP 0373660 of Cecchin et al.

In response to the rejection of claims 1-10 under 35 U.S.C. 103(a) as unpatentable over European Patent Number EP0373660 of Cecchin et al. (“Cecchin”), Applicants have amended the claims to more particularly point out and distinctly claim that the crystalline polymer (1) is a propylene homopolymer.

With respect to a rejection under 103(a), the U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness. Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. See MPEP §2143. Finally, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (C.C.P.A. 1974).

The current claims include compositions containing a crystalline propylene homopolymer and an elastomeric olefin polymer of ethylene with a C₃-C₁₀ α-olefin and optionally a diene. In

contrast, Cecchin clearly relates to mixtures of crystalline copolymers and elastomeric copolymers. Reconsideration and withdrawal of the Rejection respectfully is requested.

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Should the Examiner have questions or comments regarding this application or this Amendment,

Applicant's attorney would welcome the opportunity to discuss the case with the Examiner.

The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.

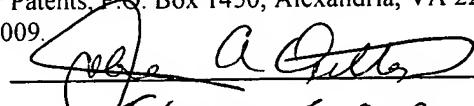
This is intended to be a complete response to the Office Action mailed August 20, 2008.

Respectfully submitted,



William R. Reid
Registration No. 47,894
Attorney for Applicant

I hereby certify that this correspondence is being deposited with sufficient postage thereon with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 6, 2009.


February 6 2009

Date of Signature

Basell USA Inc.
Delaware Corporate Center II
2 Righter Parkway, Suite 300
Wilmington, DE 19803 USA
Attorney's Telephone No.: 302-683-8178
Attorney's Fax No.: 302-731-6408